BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Enquiry No: BESCOM/GM-DAS/CS/OFC/24-25/10

Dated: 23.08.2024

SECTION – III

GENERAL TERMS AND CONDITIONS OF CONTRACT

(GCC)

Providing Point to Point Carrier Ethernet Services for DAS operations

Issued By

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SECTION-III

GENERAL TERMS & CONDITIONS OF CONTRACT

A. INTRODUCTION

1. DEFINITION OF TERMS

1.1. 'Contract' means the agreement entered into between the Owner and the Contractor as per the Contract Agreement signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.2. 'Owner or Employer' shall mean Bangalore Electricity Supply Company, Limited (BESCOM) and shall include its legal representatives, successors and assigns.

1.3. 'Contractor', 'Manufacturer' shall mean the Bidder whose bid will be accepted by the Owner for the award of the Works and shall include such Contractor's legal representatives, successors and permitted assigns.

1.4. 'Bidder' shall mean an individual bidder participating in the tender, who may be a registered sole proprietorship firm, a partnership firm or a company registered under companies' act.

1.5. 'Engineer' shall mean the officer appointed by the Owner to act as Engineer from time to time for the purpose of the Contract.

1.6. The terms 'Equipment', 'Stores' and 'Materials' shall mean and include equipment, stores and materials to be provided by the Contractor under the Contract.

1.7. 'Works' shall mean and include supplying of Equipment/Material in the Scope of the Contractor and extending all Services, as per the Specifications and Complete Erection and Putting into Satisfactory Operation including all Transportation, Handling, Unloading and Storage at the Site and all other activities to be carried out by the Contractor as per the detailed scope of the work.

1.8. 'Specifications' shall mean the Specifications and Bidding Document forming a part of the Contract and such other schedules and drawings as may be mutually agreed upon.

1.9. The term 'Contract price' shall mean the percentage on Amount put to tender quoted by the Contractor in his bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire scope of the works.

1.10. 'Inspector' shall mean the Owner or any person nominated by the Owner from time to time, to inspect the equipment, stores or Works under the Contract and/or the duly authorized representative of the Owner.

1.11. 'Site' shall mean and include the Land and other places on, into or through which the Works and the related facilities are to be Erected or Installed and any adjacent Land, Paths, Street or Reservoir which may be allocated or used by the Owner or Contractor in the Performance of the Contract.

1.12. The term 'Equipment/material Portion' of the Contract price shall mean the total value of the equipment including all applicable taxes and duties, F&I, Insurance etc.

1.13. The term 'Erection Portion' of the Contract price shall mean the value of field activities of the works including erection and putting into satisfactory operation including successful completion of performance and guarantee tests to be performed at Site by the Contractor including cost of insurances.

1.14. 'Manufacturer's Works' or 'Contractor's Works', shall mean the place of work used by the Contractor for the performance of the Contract.

1.15. 'Notice of Award of Contract'/ 'Letter of Award' / 'Letter of Intent' shall mean the official notice issued by the Owner notifying the Contractor that his bid has been accepted.

1.16. 'Date of Contract' shall mean the date on which Notice of Award of Contract/Letter of Award has been issued.

1.17. 'Month' shall mean the calendar month. 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each. A 'Week' shall mean continuous period of seven (7) days.

1.18. 'Writing' shall include any manuscript, type written or printed statement, with signature and/or seal as the case may be.

1.19. When the words 'Approved', 'Subject to Approval', 'Satisfactory', 'Equal to', 'Proper', 'Requested', 'As Directed', 'Where Directed', 'When Directed', 'Determined by', 'Accepted', 'Permitted', or words and phrases of like importance are used, the approval, judgment, direction etc. is understood to be a function of the Owner/Engineer.

1.20. 'Guarantee Period' shall mean the period during which the Contractor shall remain liable for repair, replacement of any defective parts / failures of the works performed under the contract, along with monitoring and ensuring healthy operation of the communication equipment.

1.21. 'Warranty Period' shall mean the period during which the Contractor shall remain liable for repair, replacement and ensuring healthy operation of the works performed under the Contract.

1.22. Words imparting the singular only shall also include the plural and vice – versa where the context so requires.

1.23. Words imparting 'Person' shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.

1.24. 'Bidding Documents', 'Bid Documents' means Information & Instructions, General Conditions of Contract and other Annexures included in Sections IFB, ITB, GCC, Annexures.

1.25. Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof, if any

The various Acts and Regulations are normally available for sale from the following addresses:

i) Deputy Controller
Publication Department
Government of India
Civil Lines,
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ii) Dept. Of Publication
(Government of India),

Kitab Mahal Unit No.21, Emporia Building,
Baba Kharak Singh Marg,
NEW DELHI – 110 001

Or

With leading authorized Government of Indian Book-Sellers.

1.26. In addition to the above the following definitions shall also apply
   a) 'All equipment and materials' to be supplied shall also mean 'Goods'.
   b) 'Constructed' shall also mean 'erected and installed'.
   c) 'Contract Performance Guarantee' shall also mean 'Contract Performance Security'.

1.27. Successful operation means the materials installed shall be in service & performing satisfactorily as per Technical specification.

2. APPLICATION

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. STANDARDS

The services delivered under this Contract shall conform to the standards mentioned in the Technical Specifications and when no applicable standard is mentioned; to the authoritative standard appropriate to the services and such standards shall be the latest issued by the concerned institution.

4. LANGUAGE AND MEASURES

All documents pertaining to the Contract including specifications, schedules, notices, correspondences, operating and maintenance instructions, drawings or any other writing shall be written in English language. The Metric System of measurement shall be used exclusively in the Contract.

5. CONTRACT DOCUMENTS

5.1. The term Contract Documents shall mean and include the following, which shall be deemed to form an integral part of the Contract:
   a) Invitation for Bidders including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract and all other documents.
   b) Specifications of the Equipment/ Material to be furnished and erected under the Contract as brought out in the accompanying Technical Specifications and Data Requirement Sheets.
   c) Contractor's Bid Proposal and the documents attached there to including the letters of clarifications thereto between the Contractor and BESCOM prior to the Award of Contract except to the extent of repugnancy.
   d) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of BESCOM
   e) Letter of Award and any agreed variations of the conditions of the documents, if any.

5.2. All Documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The contract shall be read as a whole.

5.3. In the event of any conflict between the above mentioned documents, the resolution shall be reached mutually by both the parties or through Mutual Arbitrator.

5.4. All the relevant Information/Material furnished by the Contractor such as Specifications of Material/Equipment, Design, Literature, Drawings or any other Data during the course of Contract will become the Property of BESCOM and BESCOM will have full rights to use the same elsewhere.

6. USE OF CONTRACT DOCUMENTS AND INFORMATION

6.1. The Contractor shall not, without BESCOM's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of BESCOM in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purpose of such performance.

6.2. The Contractor shall not, without BESCOM's prior written consent, make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract.

6.3. The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Works under this Contract, or descriptions of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from BESCOM.

6.4. Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of BESCOM and shall be returned (in all copies) to BESCOM on completion of the Contractor's performance under the Contract if so required by BESCOM.

7. INDEPENDENT CONTRACTOR

7.1. The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

7.2. Subject to provisions of the Contract, the Contractor shall be solely responsible for manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of BESCOM, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and BESCOM.

8. CONSTRUCTION OF THE CONTRACT

8.1. Notwithstanding anything stated elsewhere in the bid documents, the Contract to be entered into will be treated as a single contract for supply of works, services and materials as detailed in the scope of works.

8.2. The Contract shall in all respects be construed and governed according to Indian Laws.

9. AMENDMENT

No amendment or other variation of the contract shall be effective unless it is in writing, is dated, expressly refers to the contract, and is signed by a duly authorized representative of each party hereto.

10. JURISDICTION OF THE CONTRACT

The laws applicable to the Contract shall be the laws in force in India. The Courts of Bengaluru City of Karnataka State in India shall have exclusive jurisdiction in all matters arising under this Contract.

11. MANNER OF EXECUTION OF THE CONTRACT

11.1. BESCOM after the receipt of Letter of Acceptance from the Contractor, will send one copy of the final agreement to the Contractor.

11.2. The contract, unless otherwise agreed to, shall be signed within 15 days from issuance of Letter of Intent, at the office of BESCOM on a date and time to be mutually agreed. The Contractor shall provide Performance Guarantee, appropriate power of attorney and other requisite documents. In case the Contract is to be signed beyond the stipulated time, the Bid Guarantee submitted with the Proposal will have to be extended accordingly.

11.3. The Agreement shall be signed in duplicate and the Contractor shall be provided with one signed copy and BESCOM will retain the Original.

11.4. The contractor shall provide free of cost to BESCOM, the Engineering Data, Drawings and Descriptive materials submitted with the bid, in at least 03 copies to form a part of the Contract immediately after issue of Letter of Award.

11.5. Subsequent to signing of the Contract, the Contractor at his own Cost shall provide BESCOM with at least 03 true Bounded Copies of Contract documents within thirty (30) days after the signing of the Contract.

11.6. BESCOM will issue Detailed Work Award (DWA) after links establishment and receipt of Contract agreement and Performance Bank Guarantee.

12. ENFORCEMENT OF TERMS

The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have under the Contract.

13. INSTALLATION AND COMMISSIONG

The links shall be established and commissioned within 2 weeks from issuance of Letter of Intent by BESCOM.

14. DATA SECURITY

Employer's data consists of Critical data of Electricity Distribution System. The Contractor shall ensure security of employer's data that is transmitted over the links through VPN Tunneling.

15. COMPLETION OF THE CONTRACT

Unless otherwise terminated under the provisions of any other relevant clause, the Contract period shall be for a period Two years from the date of establishment of links and extendable for a further period of one year with mutually agreeable terms and conditions.

The links services established within 2 weeks from issuance of Letter of Intent by BESCOM.

B. GUARANTEES & LIABILITIES

16. TIME – THE ESSENCE OF THE CONTRACT

16.1. The timelines for ***"Providing Point to Point Carrier Ethernet Services for DAS operations"*** as detailed in the scope of the works and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his work as to complete the work in stipulated timelines.

16.2. The Contractor shall complete the work as detailed in the scope of work. However, consequent to delay in execution of works attributable to BESCOM, the Contractor shall not be held responsible for the same.

17. EFFECTIVENESS OF THE CONTRACT

The Contract shall be considered as having come into force from the date of issue of Letter of Intent. The Contract period shall be for a period Two years from the date of establishment of links.

18. COMPLETION TIME GUARANTEE

18.1. The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the bid documents) within the Time for Completion specified in the bid documents pursuant to GCC Clause 15.

18.2. If the Contractor fails to comply with the Time for Completion in accordance with GCC Clause 15 for the whole of the facilities, (or a part for which a separate time for completion is agreed if any) then the Contractor shall pay to BESCOM as liquidated damages for such default and not as a penalty, without prejudice to BESCOM's other remedies under the Contract, for each week or part thereof which shall elapse between the relevant Time for Completion and the User Acceptance date of the whole of the Works (or a part for which a separate time for completion is agreed) subject to the limit of ten percent (10%) of total Contract Price. BESCOM may, without prejudice to any other method of recovery, deduct the amount of such damages

from any payment due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

18.3. No bonus will be given for earlier Completion of the Facilities or part thereof.

19. GUARANTEE

The cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the equipment or defective work carried out by the Contractor, shall be borne by the Contractor**.**

20. TAXES, PERMITS & LICENCES

20.1. The bidders have to quote GST and any other applicable Taxes prevailing as on date of bid opening and the same shall be clearly spelt out in the offer. **If no mention is made then prices quoted will be evaluated as inclusive of all taxes.**

20.2. GST will be paid as indicated by the Bidder in the Price Bid.

20.3. If there is any concession/reduction in the GST by the changes in the policies by the Central/State Government, the same shall be availed and passed on to BESCOM.

20.4. Any such Taxes, Duties, Levies etc., or rates not considered by the Bidder but payable as applicable on the date of bidding shall be to Bidder's account and no separate claim on this behalf shall be entertained by BESCOM.

20.5. In case of deductions of statutory taxes, prevailing procedure will prevail.

20.6. As regards the Income Tax, Surcharge on Income Tax and any other Corporate Tax, BESCOM shall not bear any Tax liability whatsoever. The Bidder shall be liable and responsible for Payment of such Taxes as mandated under the provisions of the Law.

20.7. Before quoting, the Bidder shall ascertain from the concerned Tax Authorities of Government of Karnataka, the applicability of Work Contract Tax, Service Tax etc., in respect of this contract and include the same in the quoted Price. No separate Claim in this regard will be entertained by BESCOM, as it is the responsibility of the Bidder to pay all these Taxes.

20.8. If there is any enhancement in the statutory taxes like GST, due to change in policies by the Central/State Government then such enhanced taxes will be payable by BESCOM.

20.9. No claim for any increase towards statutory variation regarding enhancement of existing tax, GST or duty or introduction of a new tax or duty shall be entertained during the extended period of contract if the extension is required by causes attributable to the supplier.

21. REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS

21.1. If during the performance of the Contract, Engineer shall decide and inform in writing/or through mail to the Contractor that the Contractor has supplied any equipment inferior to the quality specified, the Contractor on receiving notice of such defects or deficiencies shall at his own expense within seven (7) days of his receiving the notice, or otherwise, within such time as may be reasonably necessary for making it good, furnish fresh equipment/materials up to the standards of the specifications as per BESCOM instructions. In case, the Contractor fails to do so, the Engineer may proceed to replace the equipment/materials so complained at the cost of the Contractor. Payments will not be made against that equipment or will be deducted from the payments due to the contractor.

21.2. In the event of emergency where in the judgment of the Engineer, delay would cause serious loss or damages, repairs or adjustment may be made by the Engineer or a third party chosen by the Engineer without advance notice to the contractor and the cost of such work shall be paid by the contractor. In the event such action is taken by the Engineer, the Contractor will be notified promptly and he shall assist where possible in making necessary corrections. This shall not relieve the Contractor of his liabilities under the terms and conditions of the contract.

21.3. The Contractor's full and extreme liability under this clause shall be satisfied by the payment to BESCOM of extra cost, of such replacement procured including erection as provided for in the Contract, such extra cost being the ascertained difference between the price paid by BESCOM for such replacements and the Contract Price by portion for such defective equipment/materials/works and repayments of any sum paid by BESCOM to the Contractor in respect of such defective equipment/material. Should BESCOM not so replace the defective equipment/materials the Contractor's extreme liability under this clause shall be limited to repayment of all sums paid by BESCOM under the Contract for such defective equipment/materials.

22. PATENT RIGHTS AND LOYALTIES

Void.

23. DEFENCE OF SUITS

If any action in court is brought against BESCOM or Engineer or an officer or agent of BESCOM, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or for damage or injury caused by the alleged omission or negligence on the part of the Contractor, his agents, representatives or his Sub-Contractors, or in connection with any claim based on lawful demands of Sub-Contractors, workmen, suppliers or employees, the Contractor shall in all such cases indemnify and keep BESCOM, and the Engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such action.

24. LIMITATION OF LIABILITIES

24.1. Except in cases of gross negligence or willful misconduct,

a) The contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

b) The aggregate liability of the contractor to the Employer whether under the contract, in tort or otherwise, shall not exceed twenty (20%) of total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Employer with respect to patent infringement.

25. PERFORMANCE GUARANTEE

The final payment by the Owner by releasing the Contract Performance Guarantee in pursuance of the Contract shall mean the release of the Contractor from all his liabilities under the Contract. Such final payment shall be made only at the end of the successful completion of the delivery of services OR till such time the Contractual liabilities and responsibilities of the Contractor are complied. All other payments made under the Contract shall be treated as on-account payments.

26. ENGINEER'S DECISION

26.1. In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

26.2. If, in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer, within seven (7) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.

26.3. The Engineer's decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the Agreement that there shall be no delay in the execution of the works and the decision of the Engineer as rendered shall be promptly observed.

27. POWER TO VARY OR OMIT WORK

27.1. No alterations, amendments, omissions, suspensions or variations of the Works (hereinafter referred to as 'variation') under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer, but the Engineer shall have full powers subject to the provisions hereinafter contained, from time to time during the execution of the Contract, by notice in writing to instruct the Contractor to make such variation without prejudice to the Contract. The Contractor shall carry out such variation and be bound by the same conditions as far as applicable as though the said

variations occurred in the Contract Documents. If any suggested variations would, in the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the Contract, he shall notify the Engineer thereof in writing and the Engineer shall decide forthwith whether or not, the same shall be carried out and if the Engineer in charge confirms his instructions, the Contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed. Any agreed difference in cost occasioned by any such variation shall be added to or deducted from the Contract Price as the case may be.

27.2. In the event of Engineer requiring any variation, a reasonable and proper notice shall be given to the Contractor to enable him to work his arrangement accordingly, and in cases where goods or materials are already prepared or any design, drawings or pattern made or work done requires to be altered, a reasonable and agreed sum in respect thereof shall be paid to the Contractor.

27.3. In any case in which the Contractor has received instructions from the Engineer as to the requirement of carrying out the alterations or additional or substituted work which either then or later on, will in the opinion of the Contractor, involve a claim for additional payment, the Contractor shall immediately and in no case later than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advise the Engineer to that effect. But the Engineer shall not become liable for payment of any charges in respect of any such variations, unless the instructions for the performance of the same shall be confirmed in writing by the Engineer.

27.4. If any variation in the Works results in reduction of Contract Price, the parties shall agree, in writing, so to the extent of any change in the price, before the Contractor proceeds with the change.

27.5. In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the Engineer in charge shall prevail.

27.6. Notwithstanding anything stated above in this clause, the Engineer shall have the full power to instruct the Contractor, in writing, during the execution of the Contract to vary the quantities of the items or groups of items in accordance with the provisions of clause entitled 'Change of Quantity' in section GCC. The Contractor shall carry out such variations and be bound by the same conditions as though the said variations occurred in the Contract Documents. However, the Contract Price shall be adjusted at the rates and the prices provided for the original quantities in the Contract.

28. ASSIGNMENT OF CONTRACT

For components/equipment procured by the Contractor for the purposes of the Contract, after obtaining the written approval of BESCOM, the Contractor's purchase specifications and enquiries shall call for quality plan to be submitted by the suppliers along with their Proposals. The quality plans called for from the Vendors shall set out, during the various stages of manufacture and installation, the quality practices and procedures followed by the Vendors quality control organization, the relevant reference document/standard used, acceptance level, inspection

documentation raised, etc. Such quality plans of the successful vendors shall be discussed and finalized in consultation with the Engineer and shall form a part of the Purchase Order/Contract between the Contractor and the Vendor. Within three weeks of the release of the Purchase Orders/Contracts for such bought out items/components a copy of the same without price details but together with detailed purchase specifications, quality plans and delivery conditions shall be furnished to the Engineer by the Contractor.

29. CHANGE OF QUANTITY

Void.

30. PACKING, FORWARDING AND SHIPMENT

Void.

31. COOPERATION WITH OTHER CONTRACTORS AND CONSULTING ENGINEERS

The Contractor shall agree to cooperate with BESCOM other Contractors and Consulting Engineers and freely exchange with them such technical information as is necessary and to avoid unnecessary duplication of efforts. The Engineer shall be provided with three copies of all correspondence addressed by the Contractor to other Contractors and Consulting Engineers of BESCOM in respect of such exchange of technical information.

32. NO WAIVER OF RIGHTS

Neither the inspection by BESCOM or the Engineer or any of their officials, employees, or agents nor any order by BESCOM or the Engineer for payment of money or any payment for or acceptance of, the whole or any part of the Works by BESCOM or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract, or of any power herein reserved to BESCOM or any right to damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

33. CERTIFICATE NOT TO AFFECT RIGHT OF BESCOM AND LIABILITY OF THE CONTRACTOR

No interim payment certificate of the Engineer, nor any sum paid on account by BESCOM, nor any extension of time for execution of the Works granted by the Engineer shall affect or prejudice the rights of BESCOM against the Contractor or relieve the Contractor of his obligation for the due performance of the Contract, or be interpreted as approval of the Works done or of the equipment furnished and no certificate shall create liability for BESCOM to pay for alterations, amendments, variations or additional works not ordered, in writing, by the Engineer or discharge the liability of the Contractor for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which he is bound to indemnify BESCOM, nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of BESCOM against the Contractor.

34. COMPLETION OF THE FACILITIES

As soon as the establishment of 100 Mbps links have been completed, the Contractor shall so notify BESCOM in writing. BESCM shall conduct Physical inspection of links followed by bandwidth testing.

C. CONTRACT SECURITY AND PAYMENTS

35. CONTRACT PERFORMANCE SECURITY/GUARANTEE

35.1. The Contractor shall furnish Contract Performance Guarantee(s) for the proper fulfilment of the Contract in the prescribed form within Fifteen (15) days from issuance of Letter of Intent. The performance guarantee(s) shall be as per terms prescribed in Section–II of Instructions to Bidders.

35.2. The Performance Bank Guarantee shall be equal to 5% of the Contract Price. The Guarantee shall be valid till expiry of 90 (Ninety) days after the completion of the Contract period. In case of any changes in Security Deposit as per Government orders, Bidder has to adhere to government orders.

35.3. The PBG shall be furnished in format prescribed by BESCOM. In case of furnishing Bank Guarantee, the same must be sent to us directly by the Banker. In the event of the supplier failing to deposit such security within the prescribed date BESCOM shall have full discretion to cancel the LOI and black list the firm at the discretionary of BESCOM.

35.4. All charges what so ever such as premium, commission etc., with respect to the Performance Bank Guarantee shall be borne by the bidder.

35.5. The validity of the performance bank guarantee shall be as per the terms and conditions in the Performance Bank Guarantee mentioned in the General Conditions of Contract (GCC).

35.6. The Performance Bank Guarantee shall be discharged/returned by BESCOM upon being satisfied that there has been no due in performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the Performance Bank Guarantee (PBG).

35.7. In the event of the bidder being unable to service the contract for whatever reason, BESCOM shall have the right to invoke the PBG. BESCOM shall notify the Bidder in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Bidder is in default.

35.8. BESCOM shall also be entitled to make recoveries from the Bidder bills, PBG or any other payment due, in case of any error/omission on bidder's part.

36. PHYSICAL INSPECTION AND TESTING

36.1. **Physical Inspection of links**

The Physical Inspection of proper installation of link and hardware will be conducted at BESCOM sites.

36.2. **Testing of Bandwidth**

Testing of 100 Mpbs bandwidth will be carried out for all the links as per the test procedure given by contractor. The test reports shall be submitted by the contractor duly signed by contractor and BESCOM Engineer.

37. TERMS OF PAYMENT

37.1. The payment of "One time installation" charges shall be made after the completion of Installation, testing, commissioning of 100Mbps links.

37.2. The payment of "Annual link charges" shall be made on quarterly basis for the point to point connectivity with Ethernet carrier services after the services are delivered from the date of providing link services.

37.3. Invoices in triplicate should be submitted to the Office of The General Manager (DAS). Payment will be arranged by Corporate office, BESCOM Bangalore against satisfactory completion of services and certification on bills by DAS officials and duly countersigned by GM (DAS), BESCOM.

37.4. The price quoted should be all inclusive.

37.5. All payments under the Contract shall be in Indian Rupees only.

38. PENALTY FOR DELAY IN EXECUTION/NON-EXECUTION OF THE WORK.

38.1. For delay in taking up the works to establish the links and not completing the work, a penalty @ ½% per week will be levied against the works that are delayed, subject to maximum of TEN percentage (10%) of cost on the portion of works which is not completed.

38.2. The period of continuance of delay beyond 20 weeks shall be at the discretion of the Engineer. If the Contractor still fails to complete the work within such extended period, the Contract shall be cancelled.

38.3. The total amount of Penalty for delay under the contract shall be subject to a maximum of ten percent (10%) of cost on the portion of works which is not completed and BESCOM has got every right to terminate the contract without any liability if it crosses 10%.

39. PERFORMANCE

39.1. The Contractor will also maintain the equipment Services for efficient running at all times during the contracted period. However, service availability during a quarter should not be less than 99.5%. Even if a peripheral or part of the system is not working, the system will be considered as down. In case the vendor fails to maintain the said uptime, contractor is liable for penalty proportionate to the total downtime cost calculated as per Contract Value as defined below:

Service availability	Service Credit
Less than 1% of commitment	0.5
Less than 2% of commitment	1
Less than 3% of commitment	1.5
Less than 4% of commitment	2

The penalty per link per quarter will be calculated as per the formula given below:

$$\text{Penalty (INR)} = \frac{\text{Quarterly link charges without tax (INR)} \times \text{Service Credit}}{90}$$

Also if the uptime goes below 95% for more than two consecutive months, BESCOM will have the right to terminate the contract and forfeit the performance security.

39.2. It is the responsibility of the Contractor to monitor the uptime and submit the monthly reports to BESCOM and take immediate remedial action to improve the uptime if it falls below the prescribed limit (refer table above).

39.3. Decision of the client on the facilities to be provided to the engineers of the vendor shall be final.

40. DEDUCTIONS FROM CONTRACT PRICE

Not applicable as payment will be made after services are availed.

D. RISK DISTRIBUTION

41. TRANSFER OF TITLE

Void.

42. INSURANCE

42.1. The Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Annexure. The identity of the insurers and the form of the policies shall be subject to the approval of BESCOM, who should not unreasonably withhold such approval. All the insurance to be made in India only.

(a) Transit Insurance During Transport
Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts there for) and to the Contractor's Equipment.

(b) Erection All Risks Insurance
Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance
Covering bodily injury or death suffered by third parties (including BESCOM's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance
Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(e) Workers' Compensation
In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) BESCOM's Liability
In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances
Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said the corresponding Annexure.

42.2. BESCOM shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 42.1, except for Workers' Compensation and BESCOM's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 42.1 except for the Transit Insurance During Transport, Workers' Compensation and BESCOM's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

42.3. The Contractor shall, in accordance with the provisions of the corresponding Annexure (Insurance Requirements) to the Contract Agreement, deliver to BESCOM certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to BESCOM by insurers prior to cancellation or material modification of a policy.

42.4. The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

42.5. BESCOM shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the corresponding Annexure (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Annexure. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. BESCOM shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any

cancellation or material modification of the policies. If so requested by the Contractor, BESCOM shall provide copies of the policies taken out by BECSOM under this GCC Sub-Clause 42.5

42.6. If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 42.1, BESCOM may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that BESCOM shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If BESCOM fails to take out and/or maintain in effect the insurances referred to in GCC 41.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due BESCOM under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from BESCOM. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards BESCOM, and the Contractor shall have full recourse against BESCOM for any and all liabilities of BESCOM herein.

42.7. Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 42, and all monies payable by any insurers shall be paid to the Contractor. BESCOM shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which BESCOM's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of BESCOM. With respect to insurance claims in which the Contractor's interest is involved, BESCOM shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

43. LIABILITY FOR ACCIDENTS AND DAMAGES

Under the Contract, the Contractor shall be responsible for loss or accidents which might arise owing to non – observation of safety requirements or else wise by its staff during execution of works. Also the contractor shall be responsible for loss or damage to the plant until successful completion of commissioning as defined elsewhere in the Bid document.

44. DEMURRAGE, WHARFAGE, ETC.

All demurrage, wharfage, and other expenses incurred due to delayed clearance of the Material or any other reason shall be to the account of the Contractor.

45. FIRST AID

To deal with emergency/accidental eventualities at works site, the Contractor shall make all such arrangements necessary, such as services of an ambulance etc. for transportation to hospital at his own cost.

46. FORCE MAJEURE

46.1. Force majeure is herein defined as any cause which is beyond the control of the Contractor or BESCOM as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract, such as:

a. Natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;
b. Acts of any Government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, guarantees and embargoes.

Provided either party shall within fifteen (15) days from the occurrence of such a cause notify the other in writing of such causes.

46.2. The Contractor or BESCOM shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above.

46.3. The date of completion will, subject to hereinafter provided, be extended by a reasonable time even though such cause may occur after Contractor's performance of obligation has been delayed due to other causes.

47. CONTRACTOR'S DEFAULT/LIQUIDATED DAMAGES

47.1. If the Contractor shall neglect to execute the works with due diligence and expedition or shall refuse or neglect to comply with any reasonable order given to him, in writing by the Engineer in connection with the works or shall contravene the provisions of the Contract, BESCOM may give notice in writing to the Contractor to make good the failure, neglect or contravention complained of. Should the Contractor fail to comply with the notice within thirty (30) days from the date of serving the notice, then and in such case BESCOM shall be at liberty to employ other workmen and forthwith execute such part of the works as the Contractor may have neglected to do or if BESCOM shall think fit, without prejudice to any other right he may have under the Contract to take the work wholly or in part out of the Contractor's hands and re-contract with any other person or persons to complete the works or any part thereof. BESCOM shall be entitled to retain and apply any balance which may otherwise be due on the Contract by him to the Contractor, or such part thereof as may be necessary, to the payment of the cost of executing the said part of the Works or of completing the Works as the case may be. If the cost of completing of works or executing part thereof as aforesaid shall exceed the balance due to the Contractor, then the Contractor shall pay such excess.

47.2. BESCOM may accept the Completed works assessing the Liquidated damages for shortcomings in works against the Contractor as per provisions of the Technical Specifications and such assessed amounts shall be deducted from the Contract price or otherwise recovered. Liquidated damages will be levied against non-completion of works in works as defined in the clause 2 of IFB Scope of Work subject to maximum of 10% of total Contract Price.

47.3. Such action by BESCOM as aforesaid the termination of the Contract under this clause shall not entitle the Contractor to reduce the value of

the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value and for the full period of the Contract including guarantee period.

48. TERMINATION OF CONTRACT ON BESCOM'S INITIATIVE

48.1. BESCOM reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under clause entitled 'Contractor's Default'. BESCOM shall in such an event give fifteen (15) days" notice in writing to the Contractor of his decision to do so.

48.2. The Contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and Contracts to the extent they are related to the work terminated and terms satisfactory to BESCOM or purchasing activity related to the work terminated.

48.3. In the event of such a termination the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

48.4. To recover from the Service Provider by way of Penalty, the amount of Penalty clause above.

48.5. If the Contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the Contractor is a partnership concern and one of the partners dies then unless BESCOM is satisfied that the legal representatives of the individual Contractor or of the proprietor of the propriety concern and in the case of partnership, the surviving partners, are capable of carrying out and completing the Contract BESCOM shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to payment of any compensation to the estate of deceased Contractor and/or to the surviving partners of the Contractor's firm on account of the cancellation of the Contract. The decision of BESCOM that the legal representatives of the deceased Contractor or surviving partners of the Contractor's firm cannot carry out and complete the Contract shall be final and binding on the parties. In the event of such cancellation, BESCOM shall not hold the estate of the deceased.

49. FRUSTRATION OF CONTRACT

49.1. In the event of frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, parties shall be absolved of their responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-clause 51.3 below.

49.2. In the event of non-availability or suspension of funds for any reasons, whatsoever (except for reason of wilful or flagrant breach by BESCOM and/or Contractor) then the works under the Contract shall be suspended.

49.3. Furthermore, if BESCOM is unable to make satisfactory alternative arrangements for financing to the Contractor in accordance with the terms of the Contract within three months of the event, the parties

hereto shall be relieved from carrying out further obligations under the Contract treating it as frustration of the Contract.

49.4. In the event referred to in sub-clauses 51.1 & 51.2 above the parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either party for the work already done on "Quantum merit" basis, which shall be determined by mutual agreement between the parties.

50. GRAFTS AND COMMISSIONS ETC.

Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner(s), agent(s), officer(s), director(s), employee(s) or servant(s) or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with BESCOM, shall in addition to any criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to payment of any loss or damage to BESCOM resulting from any cancellation. BESCOM shall then be entitled to deduct the amount so payable from any money otherwise due to Contractor under the Contract.

E. RESOLUTION OF DISPUTES

51. SETTLEMENT OF DISPUTES

51.1. Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.

51.2. If any dispute or difference of any kind, whatsoever, shall arise between BESCOM and the Contractor, arising out of the Contract for the performance of the Works whether during the progress of the Works or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, be referred to and settled by the MD,BESCOM who, within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to BESCOM and the Contractor.

51.3. Save as hereinafter provided, such decision in respect of every matters so referred shall be final and binding upon the parties until the completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence, whether he or BESCOM requires arbitration as hereinafter provided or not.

51.4. If after the Engineer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.

51.5. In the event of the Engineer failing to notify his decision as aforesaid within thirty (30) days after being requested as aforesaid, or in the event of either BESCOM or the Contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

52. ARBITRATION

52.1. All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided.

52.2. The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and BESCOM and the third to be appointed as an umpire by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.

52.3. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. The venue of arbitration shall be Bangalore City of Karnataka State in India.

52.4. The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of all the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

52.5. The arbitrator shall have full powers to review and/or revise any decision, opinion, direction, certification or valuation of the Engineer in accordance with the Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining the said decision.

52.6. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

52.7. During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.

53. RECONCILIATION OF ACCOUNTS

The Contractor shall prepare and submit every three (3) months, a statement covering payments claimed and the payments received vis-à-vis the works executed, for reconciliation of accounts with BESCOM.

54. NOTICES

54.1. Any Notice given by one Party to the other, pursuant to Contract, shall be sent in writing by Registered Post/Speed Post with Acknowledgement Due or Fax. Fax Notice shall be confirmed in writing to the address specified in the Contract.

54.2. Notice(s) shall be deemed to have been duly and properly served upon the Parties hereto, if sent by any of the above-mentioned methods to the address mentioned in the Contract.

54.3. A Notice shall be effective when issued by one of the above-mentioned means or on the Notice's effective date, whichever is later.

55. BANKRUPTCY

If the Contractor shall become bankrupt or otherwise insolvent or have a receiving order made against or compound with other creditors, or being a Corporation, commence to be wind up, not being a voluntary winding up for the purpose only of amalgamation/reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, BESCOM will be at liberty to terminate the contract forthwith by notice in writing to the contractor may become vested and BESCOM reserves the right to forfeit the performance security.

56. COMPLIANCE WITH LAWS AND REGULATIONS

The laws and regulations which are applicable to the Contractor and under which the Contract is to be constructed shall be Indian Laws and Regulations. The other terms and conditions regarding compliance with laws and regulations are as below:

The Contractor shall, in all matters arising in the performance of the Contract, comply with all respects, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or by-law of any duly constituted authority.

All liabilities arising out of the non-compliance of the Law of the Land by Contractor or its personnel will have to be borne by the Contractor, and BESCOM will not be responsible in any manner whatsoever for the same.

The Contract shall in all respect be construed and interpreted in accordance with the Laws in force in India, including any such Laws passed or made or coming into force during the period of the contract.

57. SEVERABILITY

Should any provision(s) of this Contract Order be held invalid or unenforceable in any respect that provision shall not affect any other provisions and this Contract Order shall be construed as if the invalid or unenforceable provision had not been included.

58. ENTIRE CONTRACT

No modification, alteration or waiver of this contract order or any of its provisions shall be effective unless in writing and signed by both the parties.

59. LAWS, JURISDICTION, DISPUTES RESOLUTION AND ARBITRATION

59.1. A Party claiming that a Dispute has arisen under this Order must give the other Party a written notice of the particulars of the Dispute.

59.2. Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

59.3. If the party fails to resolve such a dispute or difference by mutual consultation within thirty (30) days from the commencement of such dispute and difference, either party may require that the dispute be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) and subsequent Amendments made thereon, to be adjudicated by a sole arbitrator to be appointed by mutual agreement of both the parties and the award of the arbitrator shall be final and conclusive and binding upon both the Parties. (The date of commencement of the dispute shall be taken from the date when this clause reference is

quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed).

59.4. The place of arbitration shall be in Bangalore. The arbitral procedure shall be conducted in English language.

59.5. The cost of arbitration including the fees of arbitrator shall be borne by both the parties equally.

59.6. During the settlement of disputes and Arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

59.7. The award of the arbitrator shall be final and conclusive and binding upon the parties.

59.8. The courts of Bangalore only shall have the exclusive jurisdiction to deal with any issues arising out of this Contract Order.

Sd/-
General Manager,
DAS, BESCOM